

Exhibit 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

4 MICROSOFT CORPORATION,)
5 Plaintiff,) 10-01823-JLR
6 v.) SEATTLE, WASHINGTON
7 MOTOROLA INC., et al,) October 29, 2012
8 Defendant.) Pretrial
) Conference

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

APPEARANCES:

17 For the Plaintiff: Arthur Harrigan, Christopher
18 Wion, David Pritikin and Richard Cederoth

1 asserting that Motorola's H.264 standard essential patents
2 are worth more than the royalty that is presumed reasonable
3 in the Google license.

4 The court's ruling will be, in summary, granted with
5 respect to part (a) of that and denied with respect to parts
6 (b) and (c). But I will explain my reasoning. I will start
7 with a parenthetical, which is, the court has had a lot of
8 experience, both when it was in private practice and from the
9 bench, with the assertion of either work-product privilege or
10 attorney-client privilege.

11 And, apparently, they have changed those doctrines since I
12 graduated, because the notion seems to be that anything that
13 your lawyer has ever said or done is privileged. And that
14 simply is not the law. It's not the law in the Ninth
15 Circuit. It's not the law in the Supreme Court. It wasn't
16 even the law in 1973 when I graduated. And a number of the
17 attorneys who are here today have invoked the privilege in a
18 manner that is just completely inappropriate. So, I would
19 urge you all to go back to Wigmore and read your evidence
20 rules.

21 Turning to (a), Microsoft seeks to exclude Motorola from
22 presenting evidence on the following matters: Namely,
23 Motorola's reasons for not participating in certain pools,
24 such as the H.264 pool. From examining the deposition
25 testimony of Motorola's witnesses on this subject, Mr. Dailey

1 and Mr. Kowolski, the court finds that counsel for Motorola
2 instructed Motorola's witnesses to answer the question in a
3 broad sense, but asserted a privilege for specific answers.

4 As an initial matter, any privilege with respect to
5 Motorola's reason for not participating in patent pools
6 appears to have been waived, because Professor Teece, a
7 Motorola witness in the German action, and Mr. Dailey, two
8 non-attorneys, discussed such reasons with one another.

9 Now, I understand Mr. Teece, probably Professor Teece was
10 Motorola's expert in the German action and submitted a
11 declaration which states at paragraph 114, "I discussed with
12 Kirk Dailey why Motorola elected to participate in certain
13 patent pools but not others. He told me that Motorola is
14 willing to participate in certain patent pools that license
15 technology that Motorola does not see as part of Motorola's
16 key strategic focus, but chooses to administer its own
17 licensing program (and thus not to participate in the pool)
18 for technologies that it sees as part of Motorola's key
19 strategic focus, including wireless communication such as
20 GSM, CDMA, WCDMA, and LTE standards, as well as the A02.11
21 standards) and video compression."

22 When the question was asked in this litigation, there was
23 an instruction not to answer on the grounds that any
24 information would have been obtained from a lawyer and
25 therefore was protected by the privilege. That is dead

1 wrong. It's not even in the ballpark close. If you have had
2 your lawyer say to a witness: We don't participate in a
3 patent pool because we're dealing with strategic focus, that
4 is not attorney-client privilege. And the assertion of
5 privilege in regards to it is completely incorrect.

6 Additionally, the instruction by Motorola's counsel that
7 questions related to this subject were privileged and the
8 witnesses should only answer at a general level, precludes
9 Motorola's evidence because Microsoft was unable to continue
10 questioning on the subject. It would be unfair for Motorola
11 to offer testimony of its choice and have denied Microsoft
12 the opportunity to examine the testimony in detail.

13 There is a hypothetical way that this motion could be
14 granted. But even if it were granted, then the testimony
15 wouldn't be allowed. And so I won't get into it. But, for
16 example, if the Motorola attorney had told the witness: In
17 this litigation we are taking this position, and your answer,
18 or the company's reasoning involves the actions we're taking
19 in the litigation. That conceivably could be privileged.
20 However, the result is the same. The information would not
21 be available to Microsoft. So, in regards to part (a) the
22 court is granting the motion.

23 In regards to part (b) and (c) of this, they refer --
24 Microsoft's motion relates to what the parties refer to as
25 the "Google license." This is a late entry into the case and

1 Limine.

2 No. 4. Microsoft seeks to exclude references to
3 communications by either party during settlement
4 negotiations. Denied. The court will examine the offered
5 testimony at trial as it arises. Both sides correctly point
6 out that the purpose of Rule 408 is to encourage the
7 compromise and settlement of existing disputes. However,
8 Rule 408 "Does not require the exclusion of any evidence
9 otherwise discoverable, merely because it was presented in
10 the course of compromise negotiations." Citing *United States*
11 v. *Washington*, out of the Western District of Washington,
12 August 15, 2006.

13 In other words, Rule 408 cannot be read to protect
14 pre-existing information simply because it was presented to
15 the adversary in compromise negotiations. That comes out of
16 the Evidence Rule 408 Advisory Committee notes.

17 The same is true for the non-disclosure agreement. The
18 non-disclosure agreement does not require the court to
19 exclude information acquired by either party during
20 discovery.

21 We looked carefully at some of the examples that are
22 offered and concluded that we should follow the general rule
23 in this matter. If you look at the deposition of Motorola
24 employee Neill Taylor, N-E-I-L-L, the question was asked:
25 "When did Microsoft request Motorola identify its patent

1 value?" Mr. Taylor responded, "My understanding was that
2 Microsoft really needed Motorola to establish our patent
3 value to able to have some sort of a balanced deal." That
4 testimony was presented during a deposition, and it's now
5 sought to be excluded as a product of settlement negotiations
6 under 408. And the court simply will not do that.

7 No. 5. Microsoft seeks to exclude any assertion or
8 testimony that the '514 known as the Gandhi, and the '317
9 known as the Mathew patents are essential, because Motorola
10 did not timely disclose such a contention in response to
11 interrogatories specifically seeking such information.

12 This one is granted in part and denied in part. Motorola
13 agrees that the Gandhi and Mathew patents are not essential
14 to the H.264 standard, pursuant to the definition provided by
15 the ITU for essential patents. Thus, Microsoft's motion is
16 granted insofar as it requests that Motorola not present
17 evidence that its patents are essential to the H.264 standard
18 under the ITU definition.

19 There are other uses of the word "essential," which are
20 not covered by that. With respect to other definitions of
21 the word "essential," if Microsoft solicits testimony or
22 presents evidence that Motorola's patents are not essential,
23 then Motorola should be allowed to rebut that testimony or
24 evidence.

25 Finally, Motorola seeks to exclude testimony from Dr.

1 privilege. I guess it's okay for the kettle to call the pot
2 black.

3 The first of those and the one that's directly presented
4 to the court has to do with Mr. Gutierrez. And this is the
5 depositions of -- apparently taken by Mr. Schoenhard of Ropes
6 and Gray, and defended by Mr. Pritikin. And it is the
7 deposition of Horatio Gutierrez -- apparently not to be
8 confused with the Mariner's centerfielder -- taken April 4,
9 2012.

10 Mr. Gutierrez provided, properly provided information
11 regarding Microsoft's response to Motorola's offer letters.
12 And I read the deposition transcript, and I frankly found
13 Motorola's motion not to be well taken. So, as he provided
14 that information, I think the relief that Motorola now seeks
15 is simply too broad.

16 The court will, during the trial, as I indicated, allow
17 renewed objections. However, Motorola or Microsoft is going
18 to need to demonstrate that the fact being offered into
19 evidence was inquired into, and the discovery was blocked.
20 If that showing is made, then it is likely that the court
21 would exclude the evidence.

22 No. 2 for Motorola. Testimony regarding an analysis of
23 the facts under the *Georgia-Pacific* factors. There's nothing
24 like a broad topic to raise. I am going to deny it. This
25 largely centers on Mr. Lynde, L-Y-N-D-E, who provides a

C E R T I F I C A T E

I, Debbie K. Zurn, RPR, CRR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 30th day of October, 2012.

/s/ Debbie Zurn

DEBBIE ZURN
OFFICIAL COURT REPORTER

EXHIBIT 2

FILED UNDER SEAL

EXHIBIT 3

FILED UNDER SEAL

EXHIBIT 4

FILED UNDER SEAL

Exhibit 5

CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,
v.
MOTOROLA, INC., et al.,
Defendants.

CASE NO. C10-1823JLR

EXPERT REPORT OF GREGORY K. LEONARD, PH.D.

CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER

Gutierrez, an offer to grant Microsoft a worldwide license to Motorola's portfolio of patents and patent applications relating to the IEEE 802.11 standards.³⁷ The letter included an annex that identified Motorola's patents that Motorola believed to be essential to the 802.11 standard. The letter included Motorola's offer to grant the license under reasonable and non-discriminatory terms and conditions. Motorola offered a royalty rate of 2.25% of the price per unit for each unit sold by Microsoft. The letter also stated that the offer was subject to a grant back license (cross license) under Microsoft's 802.11 essential patents. Motorola also offered to license less than its entire portfolio of 802.11 essential patents on RAND terms.

48. According to Mr. Dailey, the request for a cross license was part of Motorola's usual practice to decrease the royalty rate if the other party agreed to cross license its patents. The offer was left open for 20 days, which I understand from Mr. Dailey was Motorola's standard practice³⁸ as a way to move the negotiations along; it was not meant to be an "exploding" offer or a "take-it-or-leave it" offer. Instead, it was a way to try to encourage the other side to give a prompt response.

49. According to Mr. Gutierrez, Microsoft received the October 21, 2010 letter on the morning of October 22, 2010. He forwarded the letter immediately to Microsoft's litigation counsel. Although the parties met in person later that day to discuss a resolution of the parties' disputes, the parties did not discuss the October 21 letter. In particular, Microsoft did not ask for any clarification of any of the terms in the October 21 letter.³⁹

³⁷ MOTM_WASH1823_0018476-97; Trial Transcript, Day 6, p. 36 (Dailey).

³⁸ Trial Transcript, Day 6, p. 76 (Dailey).

³⁹ Gutierrez Dep. II (rough), p. 60.

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50. On October 29, 2010, Motorola sent Microsoft another letter, which offered to grant Microsoft a worldwide license to Motorola's portfolio of patents and patent applications relating to the ITU-T Recommendation H.264. Like the previous letter, this letter included an annex identifying Motorola's patents that are essential to the H.264 standard. This letter also offered to grant the license under reasonable and non-discriminatory terms and conditions and specified an offer of a 2.25% royalty rate per unit. This offer was subject to a cross license under Microsoft's H.264 essential patents. Again, according to Mr. Dailey, if Microsoft had agreed to a cross license, the royalty rate would have been reduced by an amount to be determined that would depend on the value of Microsoft's patents. Motorola also offered to license less than its entire portfolio of H.264 essential patents, on RAND terms. The same 20 day period was given in this letter, as well, which again I understand to have been a way to facilitate a prompt response.⁴⁰

51. In the Patent Declarations Motorola submitted related to the H.264 patents, there was an option for granting licenses based on "reciprocity." Motorola selected that option, which indicates that Motorola wanted to license its patents on the condition that the other party cross license its own H.264 essential patents to Motorola.⁴¹

52. Based on Mr. Dailey's testimony, I understand that, Motorola does not stack royalties for its SEP portfolios.⁴² Thus, Motorola's offer for a license to both its 802.11 and H.264 portfolios would have been a royalty rate of 2.25%, not a combined 4.5%.

⁴⁰ MOTM_WASH1823_0018498-521 at 498.

⁴¹ MOTM_WASH1823_0000035-77 at 36.

⁴² Trial Transcript, Day 6, p. 66 (Dailey).

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technical, economic, and licensing experts submitted reports and were deposed. Thus, in making its determination of a RAND royalty, the Court had access to substantial information on, among other things, the nature of Motorola's technology and its relation to the standard, the use of the Motorola technology in Microsoft's products, the nature of Microsoft's business, the extent of participation of other companies in the standard, and various licensing agreements, patent pools, and other analyses that might have been relevant.⁵² In addition, each company presented their best arguments in a coherent and organized fashion to the Court.

63. As a general matter, in my experience, it would be extraordinary for the parties in a patent licensing negotiation to have available to them the level of information that was available to the Court in this case. This statement would apply at the conclusion of a negotiation, let alone at the very beginning.

64. In particular, when it made its opening offers, Motorola did not have the benefit of the knowledge that was developed through this legal proceeding. While Motorola was presumably aware of the nature of its own technology in isolation, it was not fully aware of how the technology was used in the Microsoft products⁵³ or the nature of Microsoft's business.⁵⁴ Nor did Motorola know how any Microsoft patents might apply to Motorola products.⁵⁵ Indeed, Mr. Gutierrez testified that, in a typical Microsoft license negotiation, Microsoft does not have non-public information about the other party to the negotiations.⁵⁶ Moreover, there is no evidence that Motorola was aware of the arguments made by Microsoft during the hearing as to

⁵² RAND Order, pp. 7-8.

⁵³ Dailey Dep., pp. 30, 33.

⁵⁴ Trial Transcript, Day 6, pp. 118-121 (Dailey).

⁵⁵ Dailey Dep., pp. 29.

⁵⁶ Gutierrez Dep. II (rough), pp. 124-125.

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the relative unimportance of the Motorola technologies to the standards, both in a technical sense and relative to other contributors to the standards.

65. As discussed above, parties to a license negotiation may have particular preferences about the terms and conditions of the license agreement, including but not limited to the structure of the licensing fees. At the time it made its initial offer, Motorola was not aware of Microsoft's preferences regarding these issues.⁵⁷

66. Furthermore, as of October 2010, Motorola had no experience licensing its 802.11 and H.264 SEP portfolios on a standalone basis. More generally, its licensing experience was in hardware, not software. As discussed above, at that time, Wi-Fi functionality had only recently been widely incorporated into smartphones and sales of smartphones had only recently started growing rapidly. As of October 2010, Motorola's 802.11 and H.264 SEP portfolios had not been separately licensed. [REDACTED]

[REDACTED]
[REDACTED]
⁵⁸ It is difficult or impossible to break out a separate royalty rate for the 802.11 and H.264 SEP portfolios in these agreements, and they do not cover software.⁵⁹ Accordingly, Motorola had no past experience on which it could draw when it attempted to negotiate a RAND license with Microsoft. This is in direct

⁵⁷ Dailey Dep., pp. 39-40.

⁵⁸ Motorola Mobility, Inc.'s Supplemental Written Responses to Topics 11-12 of Microsoft's Third Amended 30(b)(6) Notice of Deposition, Exhibit E.

⁵⁹ The Court reached a similar conclusion with respect to the Motorola-RIM license. RAND Order ¶¶ 425-429.

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contrast to the situation with its cellular SEP portfolio, which Motorola had licensed many times to many licensees by October 2010.⁶⁰

67. The absence of any past experience with a particular type of licensing situation is common in situations where a licensor is licensing patents for the first time or for the first time in a new industry. In fact, Mr. Gutierrez testified that when Microsoft licenses a new patent licensing program, it effectively has a “pilot” for the new program. It sets the royalty rate based on its analyses, but that rate may not be accepted by the market. If that is the case, Microsoft will adjust the rate accordingly.⁶¹

68. Motorola had ultimately declined to participate in the MPEG LA H.264 patent pool and did not participate in the Via Licensing pool, presumably in both cases because it thought its patents were more valuable than the average patent in the respective pools. Accordingly, as of October 2010, it would have been reasonable for Motorola not to consider these patent pools as a useful benchmark for a royalty rate in a RAND license for its patents.

69. The outcome of the 2003 Proxim litigation may have indicated to Motorola that its initial offer of 2.25% was reasonable. In that litigation, Motorola (then Symbol) had been awarded reasonable royalties at a 6% royalty rate.

70. Motorola had a “STAMP Board working group” that in 2003 put together a presentation regarding licensing 802.11 patents. As this was well before the events at issue in this case, Microsoft cannot claim that this presentation was put together by Motorola as part of

⁶⁰ Even with Motorola’s cellular patent licenses, comparing one license to another is difficult given their complexity and differences between them in terms of royalty structures, the value of the patents being cross licensed to Motorola, other types of consideration, and the characteristics of the licensee’s business, among other things. However, while the final agreement differed widely across licensees, Motorola consistently used 2.25% as its opening offer.

⁶¹ Gutierrez Dep. II (rough), pp. 120-121.

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party, as Motorola unexpectedly had been, so that the negotiation is expected to be of long duration and closely fought.

76. It is my opinion that, for these reasons, when formulating its opening offers to Microsoft in October 2010, Motorola defaulted to the standard opening offer of 2.25% on the end product that it had long used successfully when negotiating licenses to its cellular SEP portfolio.⁷⁰ While this opening offer is outside the RAND royalty ranges for Motorola's 802.11 and H.264 SEP portfolios that have been determined by the Court, Motorola was operating at that point in the negotiation on the basis of substantially less information, as well as an expectation that the negotiation would continue⁷¹, and thus resorted to its customary default offer. Motorola had not been prepared for in-depth cross-licensing discussions when Microsoft unexpectedly filed its lawsuit on October 1, 2010, and thus had to start from scratch to quickly identify its patents to Microsoft (at Microsoft's request). However, defaulting to its custom when making an opening offer, particularly given the particular situation in which Motorola found itself, does not constitute a lack of good faith.

77. Moreover, Motorola would not have reasonably expected to affect, through its opening offers, Microsoft's willingness to pay a royalty for the Motorola portfolios. Microsoft is a sophisticated company, with its own large patent portfolio, extensive knowledge of technology, substantial experience in licensing, deep financial resources, and the recourse of bringing a lawsuit such as this one. Indeed, Microsoft's licensing witness, Mr. Gutierrez, testified that [REDACTED]

[REDACTED]

⁷⁰ Dailey Dep., p. 25; Kowalski Dep., pp. 20-21

⁷¹ In negotiating its various cellular license agreements, Motorola has demonstrated substantial flexibility, having agreed to many different types of licensing fee structures, such as lump sum royalties, running royalties with per unit caps, running royalties with an overall annual cap, as well as other forms of consideration.

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Dated: May 29, 2013

Exhibit 6

1 UNITED STATES DISTRICT COURT.

2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3

4 MICROSOFT CORPORATION,)
5 Plaintiff,) C10-01823-JLR
6 v.) SEATTLE, WASHINGTON
7 MOTOROLA INC., et al.,) November 20, 2012
8 Defendant.) TRIAL DAY 6
9)

10 VERBATIM REPORT OF PROCEEDINGS
11 BEFORE THE HONORABLE JAMES L. ROBART
12 UNITED STATES DISTRICT JUDGE

13 Sealed by Court Order

14 Unredacted Version

15 APPEARANCES:

16
17
18 For the Plaintiff: Arthur Harrigan, Christopher
19 Wion, David Pritikin, Rick
20 Cederoth, Ellen Robbins and Andy
21 Culbert

22
23 For the Defendants: Jesse Jenner, Ralph Palumbo,
24 Philip McCune, Kevin Post, Tom
25 Miller and James R. Batchelder

1 THE COURT: They are admitted.

2 (Exhibit Nos. 1 and 2 were admitted into evidence.)

3 Q Let's talk about Exhibit 1, the 802.11 offer. At a high
4 level will you explain what you were intending to do in
5 connection with Exhibit 1?

6 A We sent this letter -- we had been sued by Microsoft in
7 early October, and we had been invited by Microsoft to put
8 our patents on the table with respect to their product, so we
9 could have a discussion. So this was intended to be an
10 initial offer under our 802.11 patents so that we could have
11 a discussion and a negotiation with Microsoft.

12 Q Now, in the middle of the first paragraph it refers to an
13 offer being at a reasonable royalty of 2.25 percent per unit.
14 Do you see that?

15 A Yes.

16 Q What is 2.25 percent per unit in Motorola's licensing
17 lexicon?

18 A So, 2.25 percent is our standard opening offer for any of
19 our core essential patent portfolios, such as WiFi, or
20 802.11, H.264, or any of the cellular standards.

21 Q What's the basis for 2.25 percent being a standard offer
22 at Motorola?

23 A It's a historical number. Back in the early '90s we had a
24 fixed dollar unit in our cellular licensing program. I
25 believe it was \$9 a unit that was applied to some very

1 expensive cellular phones that were in the \$2,000 range. As
2 those prices were quickly coming down, our licensees had
3 asked to convert to a running royalty in order to be more
4 reasonable and stay in line with the product, the average
5 selling price of the products.

6 Q So you actually converted to a percent of end price at the
7 request of licensees in the '90s?

8 A Yes.

9 Q Is 2.25 percent Motorola's standard rate for every
10 essential portfolio?

11 A No. I think I mentioned, we have really three areas. The
12 core wireless research areas, like 802.11 and cellular, and
13 also core video compression technologies, like H.264, we use
14 the 2.25 percent.

15 Q Since about when in time has 2.25 percent been the
16 so-called standard offering rate?

17 A Since sometime in the mid-'90s.

18 Q Since before 2000?

19 A Yes.

20 Q Turning to the other portion of this, the end product.
21 Based on your experience in licensing, do negotiating parties
22 often use end product as the royalty base?

23 A Yes, they do.

24 Q Why do they do that?

25 A For several reasons. Historically in my space we've

1 A So, we were in the midst of having conversations with
2 Microsoft. They wanted to understand the value of our patent
3 portfolios. We knew these two patent portfolios in
4 particular were relevant to the discussion. So we sent the
5 letters, putting them on notice so that we could carry
6 forward with good-faith negotiations.

7 Q Were these letters, you say, in request for information
8 that Microsoft wanted about your patents?

9 A Yes.

10 Q Did Microsoft respond to either of these letters before
11 filing the breach of complaint -- the breach of contract
12 complaint in this action?

13 A They did not, no.

14 Q Did Microsoft respond after the breach complaint was
15 filed?

16 A Yes, they did.

17 Q How did they respond?

18 A They actually -- I think they -- we spoke to them right
19 after they filed the breach of contract complaint, and they
20 said, don't be concerned about the complaint, it was a
21 litigation tactics week, and they expected some good work
22 from our lawyers as well.

23 So, it was really -- that was the start of it. And then
24 we entered into negotiations.

25 MR. PRITIKIN: Your Honor, we're going to object.

1 The exhibits are here. We're also going to object to
2 questions and answers, testimony about settlement discussions
3 that occurred between Microsoft and Motorola. It's no secret
4 that, like all big companies, they have had a dialogue that's
5 been going on over the last couple of years. We think it is
6 inappropriate for two reasons. First, under Rule 408; and
7 second, on relevance grounds.

8 What we're trying to determine here is what is a RAND
9 royalty. And the settlement discussions that the parties
10 have had regarding this case and related disputes really
11 don't have a bearing on that. It's not evidence that ought
12 to be considered because of the principle underlying Rule
13 408.

14 We also think that as the finder of fact it's particularly
15 inappropriate for the court to be relying on and hearing
16 evidence about offers and counteroffers that have been made
17 over the intervening year and a half or two years. They have
18 a number of exhibits here that get into that. We object to
19 that. We also object to the testimony on this subject.

20 MR. JENNER: Your Honor, if I may. Two things.
21 First of all, as I think Your Honor indicated at the in
22 limine rulings, Rule 408 has a particular focus, it doesn't
23 apply to everything in the universe having to do with talks
24 about settlement or resolving conflict. We do not offer
25 anything that we're about to get into for the purpose of

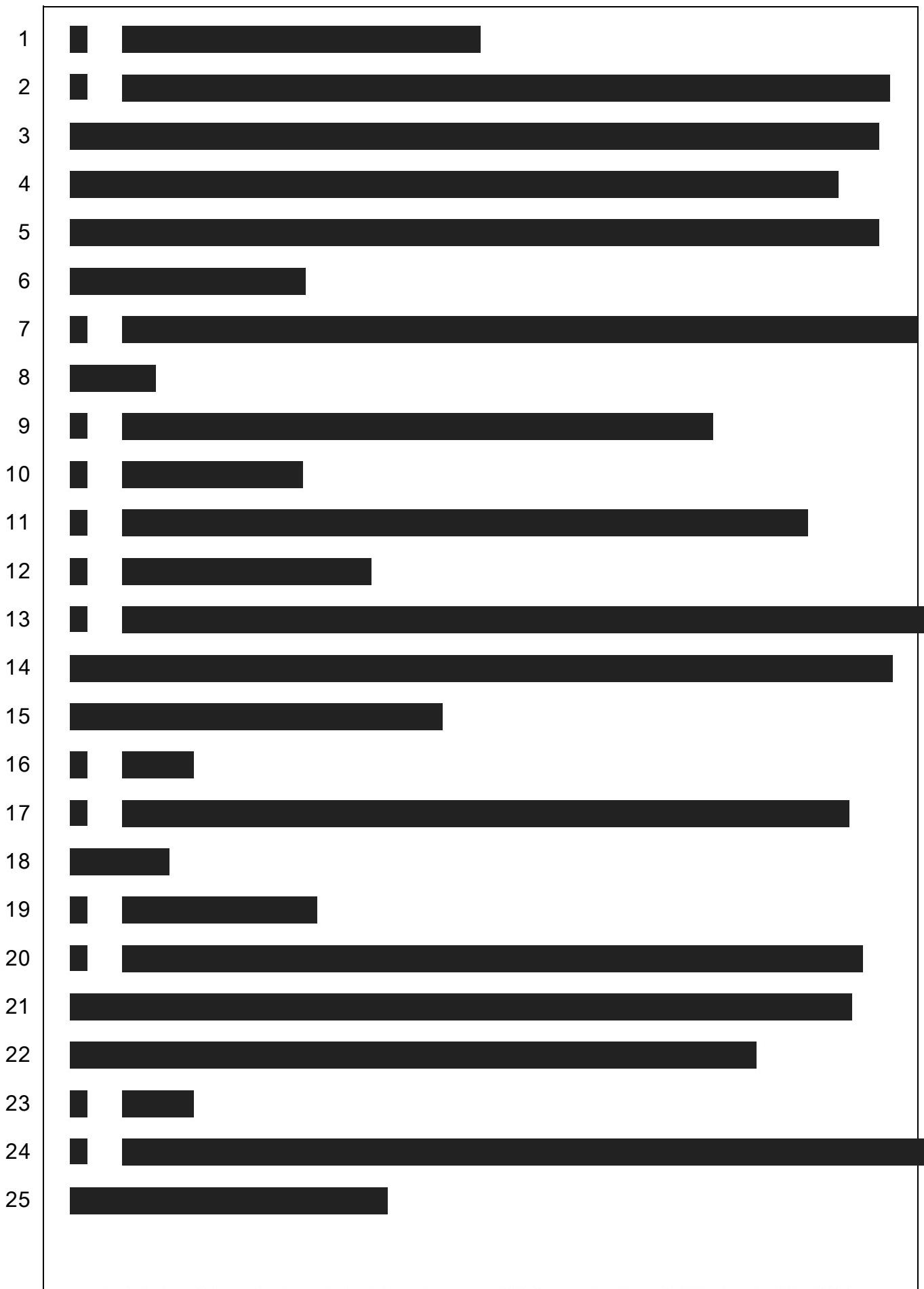


Exhibit 7

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
ALLEN LO - 7/12/2012

1

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

3 ---oo---

4 MICROSOFT CORPORATION, a
5 Washington corporation,

6 Plaintiff,

7 vs.

No. C10-1823-JLR

8 MOTOROLA INC., et al.,

9 Defendants.
10 _____/

11 MOTOROLA MOBILITY, INC., et al.,
12 Plaintiffs/Counterclaim Defendant,
13 vs.

14 MICROSOFT CORPORATION,
15 Defendant/Counterclaim Plaintiff.
16 _____/

17 Rule 30(b)(6) and Personal Deposition of

18 ALLEN LO

19 Thursday, July 12, 2012

20 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

21 PURSUANT TO PROTECTIVE ORDER

22
23
24 REPORTED BY: JOHN WISSENBACH, RDR, CRR, CBC, CCP,
25 CLR, CSR 6862 01-444456

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
ALLEN LO - 7/12/2012

7

1 his personal capacity.

2 MR. CANNON: This is Brian Cannon, from
3 Quinn Emanuel, for Google and the witness.

4 MR. JENNER: Jesse Jenner, from Ropes &
5 Gray, for the defendants.

6 MR. COLGAN: John Colgan, in-house counsel
7 at Google.

8 THE VIDEOGRAPHER: Thank you. The court
9 reporter today is John Wissenbach, of Merrill Court
10 Reporting. Would the court reporter please swear in
11 the witness.

12 ALLEN LO,
13 having been first duly sworn, testified as follows:

14 THE VIDEOGRAPHER: Thank you. Please
15 begin.

16 EXAMINATION BY MR. PRITIKIN

17 Q. Good morning, Mr. Lo. Could you please
18 state your full name and address for the record.

19 A. Yes. Allen Mingren Lo. Address is 20880
20 Jacks Road, in Saratoga, California.

21 Q. For whom do you work?

22 A. Google.

23 Q. And what is your title?

24 A. Deputy general counsel for patents and
25 patent litigation.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
ALLEN LO - 7/12/2012

11

1 A. 1990.

2 Q. What did you do --

3 A. I'm sorry, 1995. I graduated from Ohio
4 State in 1990, law school in 1995.

5 Q. Now, you are appearing today in response to
6 subpoenas that were served on you and on your
7 employer, Google; is that correct?

8 A. I know they were served on Google. They
9 may have been served on me. I'm not sure. But yes.

10 Q. Let me hand you what has been marked as
11 PX-100, 101, and 102.

12 Do you have -- let me -- let me trade you
13 these. I think I have the originals.

14 MR. CANNON: And these were served on
15 Google's counsel.

16 BY MR. PRITIKIN:

17 Q. Have you seen the subpoenas before, Mr. Lo?

18 A. I've seen at least one of them.

19 Q. And do you see that PX-100 is a subpoena
20 served on -- directed to you?

21 A. Yes.

22 Q. And you're appearing today in response to
23 this subpoena?

24 A. Yes.

25 Q. And PX-101 is a subpoena directed to

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
ALLEN LO - 7/12/2012

12

1 Google, and you're appearing in response to this as
2 well?

3 A. Yes, for certain topics.

4 Q. All right. And would you look at PX-102.
5 And if you turn to the text beginning at page 5, do
6 you see that there are certain deposition topics
7 that are listed?

8 A. Yes.

9 Q. And is it correct that you have been
10 designated by Google to testify as its corporate
11 representative as to certain of these topics?

12 A. Yes.

13 Q. And is it correct that you have been
14 designated to testify on Google's behalf as to
15 topics 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, and 14?

16 MR. CANNON: Counsel, I might need to
17 clarify some of the -- some of the designations that
18 we had previously provided. Topics numbers 5 and 9
19 will be handled by Mr. Peterson.

20 BY MR. PRITIKIN:

21 Q. Other than topics 5 and 9, are you Google's
22 corporate representative for purposes of the other
23 topics that I listed?

24 A. Yes.

25 Q. What have you done to prepare yourself to

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EXHIBIT 8

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EXHIBIT 9

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EXHIBIT 10

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EXHIBIT 11

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